

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Communications Assistance for Law	)	ET Docket No. 04-295
Enforcement Act and Broadband Access	)	
and Services	)	
	)	RM-10865
	)	

**PETITION FOR RECONSIDERATION AND FOR CLARIFICATION  
OF THE CALEA APPLICABILITY ORDER<sup>1</sup>**

The Commission should reconsider its decision to start the 18-month CALEA compliance clock on November 14, 2005, and instead should start that clock on the effective date of its forthcoming order on CALEA capability requirements for broadband and VoIP providers. The Commission should also clarify and delineate the specific broadband access services that qualify as “newly covered services” under the *CALEA Applicability Order*.

**I. THE COMMISSION SHOULD LINK THE 18-MONTH CALEA COMPLIANCE DEADLINE TO ITS FORTHCOMING ORDER ON CALEA CAPABILITY.**

In its recent *CALEA Applicability Order*, the Commission determined that the requirements of CALEA apply to facilities-based providers of broadband services as well as to providers of interconnected VoIP services. *CALEA Applicability Order* ¶ 46. In that *Order*, the Commission pointed out that its decision was “limited” and only addressed the legal question of whether CALEA applied to these service providers. *Id.* ¶¶ 1, 46. The Commission stated that it would issue a subsequent order to address “important questions regarding the ability of

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<sup>1</sup> *Communications Assistance for Law Enforcement Act and Broadband and Access Services*, First Report and Order, 20 FCC Rcd 14989 (2005) (“*CALEA Applicability Order*” or “*Order*”).

broadband Internet access providers and VoIP providers to provide all of the capabilities that are required by section 103 of CALEA, including *what those capability requirements mean in a broadband environment.*” *Id.* ¶ 46 (emphasis added). Despite recognizing that it had not answered these important questions, the Commission nonetheless imposed an 18-month deadline for providers to become compliant with CALEA and determined that the clock for that deadline should start on the effective date of its *Order*, November 14, 2005.

The Commission’s decision to start the clock on November 14, 2005 (rather than on the effective date of its forthcoming capability order) places broadband and VoIP providers in an untenable position. These providers are obligated to provide CALEA capabilities to law enforcement in 18 months, but they lack any meaningful direction as to what those capabilities are supposed to be. Indeed, in the notice of proposed rulemaking that led to the *CALEA Applicability Order*, the Commission raised a host of questions about what obligations broadband and VoIP providers may or may not have under section 103 of CALEA. For example, the Commission recognized that broadband providers and VoIP providers may not be able to easily isolate call-identifying information for VoIP calls and observed that it may need to clarify what constitutes call-identifying information for broadband and VoIP services.<sup>2</sup> The Commission also pointed out that it is “not always readily apparent” where call-identifying information is available in the network, nor is it readily apparent whether the obligation to provide call-identifying information should fall on the VoIP provider, the broadband provider, or both providers. *CALEA NPRM* ¶ 68.

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<sup>2</sup> *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, Notice of Proposed Rulemaking and Declaratory Ruling, FCC 04-187 at ¶¶ 65, 67 (rel. Aug. 9, 2004) (*CALEA NPRM*).

The Commission further suggested that a provider *may* be able to satisfy its CALEA obligations by using a “trusted third party” to extract content and call-identifying information from a particular broadband or VoIP communication. *Id.* ¶¶ 69-76. The Commission did not, however, approve the use of trusted third parties, nor did it explain how a provider who uses a trusted third party could satisfy its CALEA obligations to safeguard the privacy and security of content and call-identifying information or its CALEA obligations to protect information about government’s surveillance activities. *Id.* ¶ 76.

Without answers to these and other basic questions about the scope of their CALEA obligations, broadband and VoIP providers cannot reasonably be expected to become CALEA compliant within the existing 18-month timeframe established by the Commission. To ensure that broadband and VoIP providers are given adequate guidance regarding the extent of their CALEA responsibilities and sufficient time to comply with those responsibilities, the Commission should reconsider its decision to start the 18-month clock on November 14, 2005. Instead, the Commission should start that clock on the effective date of its forthcoming order on CALEA capability requirements for broadband and VoIP providers.

**II. THE COMMISSION SHOULD CLARIFY THE SPECIFIC BROADBAND ACCESS SERVICES THAT QUALIFY AS “NEWLY COVERED SERVICES” UNDER THE CALEA APPLICABILITY ORDER.**

The Commission should also spell out the specific broadband access services that are “newly covered services” subject to the 18-month compliance timetable established in the *CALEA Applicability Order*. *CALEA Applicability Order* ¶ 46. The *Order* contains language that broadly and expressly applies the 18-month extension to broadband access services without limitation. The *Order* finds that “18 months is a reasonable time period to expect *all providers* of facilities-based broadband Internet access service and interconnected VoIP service to comply

with CALEA.” *Id.* ¶ 46 n.138 (emphasis added). *See also id.* ¶ 24 (finding that “facilities-based providers of *any type* of broadband Internet access service, including but not limited to wireline, cable modem, satellite, wireless, fixed wireless, and broadband access via powerline, are subject to CALEA”). The broadband access services subject to the *Order* presumably include cable modem, DSL, fiber, ATM and frame-relay, to name just a few, but the Commission should delineate the specific broadband access services that qualify as “newly covered services” under the *Order*.

Such a clarification is consistent with the stated policy objectives of the *Order*. For example, the Commission recognized that different CALEA compliance regimes for different broadband access providers might cause “competitive distortions that make no policy sense.” *Id.* ¶ 33 n.91. As the Commission explained: “One of the cornerstones of the Commission’s broadband policy is achieving the goal of developing a consistent regulatory framework across all broadband platforms by treating providers in the same manner with respect to broadband services providing similar functionality.” *Id.* ¶ 33. Indeed, it was precisely because the *Order* applied to *all* facilities-based providers of broadband Internet access services that the Commission determined it would “have no skewing effect on competition.” *Id.* Requiring some providers to immediately comply with CALEA, while granting others an 18-month grace period, would fundamentally undermine this “cornerstone” of the Commission’s broadband policy and “cause[] competitive distortions that make no policy sense.” *Id.* ¶ 33 n.91. Further, and perhaps more significant, requiring different timetables for compliance would also run counter to public policy by permitting individuals to avoid electronic surveillance simply by virtue of what broadband access service they choose. As the Commission noted, to the extent some broadband Internet access providers are subject to CALEA and others are not, criminal activity will migrate

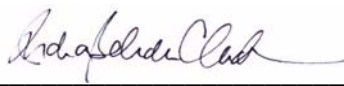
“onto less regulated platforms.” *Id.* ¶ 33. For all of these reasons, the Commission should clarify that the 18-month compliance deadline for broadband access services applies to all such services.

### CONCLUSION

For the foregoing reasons, the Commission should grant USTA’s petition for reconsideration and for clarification of the *CALEA Applicability Order*.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

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